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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,209	05/12/2000	KORNELIA BERGHOF	2727-99J	6039
20999	7590	02/25/2004	EXAMINER	
FROMMER LAWRENCE & HAUG 745 FIFTH AVENUE- 10TH FL. NEW YORK, NY 10151			SWITZER, JULIET CAROLINE	
			ART UNIT	PAPER NUMBER
			1634	

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

9A.M.

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/463,209	BERGHOFF ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Juliet Switzer	1634

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 February 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 52-69.

Claim(s) withdrawn from consideration: NONE.

8.  The drawing correction filed on \_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s) \_\_\_\_\_.

10.  Other: See Continuation Sheet

  
**GARY BENZION, PH.D.**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**

Continuation of 2. NOTE: The claims have been significantly amended to include limitations which exclude the hybridization of probes to *Staphylococcus aureus*. This limitation was not previously searched or considered. Therefore, the amendments to the claims raises new issues of search and consideration.

Further, Claims 70-81 have been newly added without cancelling a corresponding number of finally rejected claims.. These claims also appear to include limitations of negative or positive controls which were neither searched nor considered previously.

Continuation of 5. does NOT place the application in condition for allowance because: The newly amended and added claims have not been entered, therefore the arguments directed to the claims are moot.

With respect to the 102 and 103 rejection, although the claims have not been entered, in an effort to facilitate compact prosecution, it is noted that the claims are drawn to products. Kunsch teaches a nucleic acid which meets all of the limitations of the product claims. The intended use of the product for detecting *Staphylococcus aureus* and not other strains does not overcome the rejection directed to a product claim. Since Kunsch teaches the product, the product is anticipated. It is not relevant that Kunsch does not teach that SEQ ID NO: 1 is to a conserved region. Rather Kunsch teaches a nucleic acid comprising SEQ ID NO: 1, as required by the instant claims.

Continuation of 10. Other: The response indicated that a Supplemental Amendment will be filed once the issue of new matter has been investigated. The objection is hereby maintained. .